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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

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11 NIIKO DAV'ON SMITH, ) No. ED CV 13-02330-JAK (VBK)  
12 Petitioner, )  
13 v. ) ORDER FOR SUMMARY DISMISSAL  
14 R. J. GROUNDS, )  
15 Respondent. )  
16 \_\_\_\_\_ )

17 On December 18, 2013, Niiko Dav'on Smith (hereinafter referred to  
18 as "Petitioner") filed a "Petition for Writ of Habeas Corpus" in the  
19 United States District Court for the Central District of California.<sup>1</sup>  
20 Petitioner raised the following nine claims in his Petition which he  
21 labeled as Grounds Three through Eleven:

22 (3) In violation of Petitioner's federal rights under the Fifth  
23 Amendment, Petitioner was tried and convicted of aiding and abetting  
24 a principal;  
25 (4) in violation of Petitioner's federal rights under the First

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27 <sup>1</sup> On August 12, 2013, an "Order of Transfer" was issued by  
28 United States District Judge Richard Seeborg transferring the Petition  
from the United States District Court for the Northern District of  
California to the United States District Court for the Central  
District of California.

1 Amendment Petitioner was tried and convicted for associational  
2 activities forbidden by California Penal Code § 186.22;

3 (5) In violation of Petitioner's federal rights under the Fifth  
4 Amendment, Petitioner was interrogated while in custody by a method  
5 that circumvented the holding of Miranda v. Arizona, 384 U.S. 1436  
6 (1966);

7 (6) In violation of Petitioner's federal rights under the Fifth  
8 Amendment, Petitioner was charged by information, rather than being  
9 indicted or presented by a grand jury, despite the fact that the case  
10 against Petitioner did not arise in the armed forces, and the crimes  
11 were felonies;

12 (7) In violation of Petitioner's federal rights under the Seventh  
13 and Fourteenth Amendments, the jury was not instructed that it could  
14 not return a verdict against Petitioner if there was no evidence  
15 against Petitioner on any accusation necessary to the charge[s];

16 (8) In violation of Petitioner's federal rights under the Fifth  
17 and Fourteenth Amendments, the jury was not instructed that it could  
18 not return a verdict against Petitioner if, with respect to any  
19 accusation necessary to constitute a given charge, though as evidence  
20 in Petitioner's favor;

21 (9) In violation of Petitioner's federal rights under the Sixth  
22 and Fourteenth Amendments, the trial court's instructions to the jury  
23 permitted the jury to give the State the benefit of the doubt and did  
24 not deny it to Petitioner;

25 (10) In violation of Petitioner's federal rights under the Sixth  
26 and Fourteenth Amendments, the jury, with permission of the trial  
27 court, made several inferential conclusions that were unsupported by  
28 the evidence;

1       (11) In violation of Petitioner's federal rights under the Sixth  
2 and Fourteenth Amendments, California Penal Code § 31 was so vague  
3 that Petitioner cannot reasonably anticipate the provision being  
4 applied towards Petitioner's conduct, nor being properly applied by  
5 the jury." (See Petition at pp. 7 and 8.)<sup>2</sup>

6       On December 23, 2013, the Court issued a Minute Order ordering  
7 Petitioner to file a document with the Court indicating whether  
8 Petitioner erroneously filed the within Petition in the United States  
9 District Court rather than the California Supreme Court. It appeared  
10 to the Court that the Petition was duplicative of the habeas petition  
11 filed in Niiko Dav'on Smith v. Warden SVSP, Case No. ED CV 12-01453-  
12 JAK (VBK). Petitioner was advised that, if he erroneously filed this  
13 Petition in the United States District Court, he could request the  
14 Court to dismiss the within Petition and proceed on Case No. ED CV 12-  
15 01453-JAK (VBK).

16       On March 5, 2014, Petitioner filed "[Proposed] Petitioner's  
17 Motion to Dismiss the Petition Case No. ED CV 13-02330-JAK (VBK) and  
18 Thereafter Requesting the Court Grant the Petitioner's Motion to Stay  
19 in Case No. ED CV 12-01453-JAK (VBK)."

20       Petitioner's habeas petition in Niiko Dav'on Smith v. Warden  
21 SVSP, Case No. ED CV 12-01453-JAK (VBK) contains two exhausted claims  
22 in Grounds One and Two. On June 4, 2013, Petitioner was granted a Stay  
23 in Case No. ED CV 12-01453-JAK (VBK) pursuant to Kelly v. Small, 315  
24 F.3d 1063 (9th Cir. 2003) in order to exhaust Grounds Three through  
25 Eleven. Petitioner currently has a habeas petition pending in the

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27       <sup>2</sup> The Court notes that the Petition was on a form utilized by  
28 the California State Courts. The Petition contained Claims Three  
through Eleven of the Petition filed in Case No. ED CV 12-01453-JAK  
(VBK).

1 California Supreme Court containing the claims in Grounds Three  
2 through Eleven.

3 As noted above, Petitioner requests that the Petition in Case No.  
4 ED CV 13-02330-JAK (VBK) be voluntarily dismissed.

5 Pursuant to Fed.R.Civ.P. 41(a)(1), Petitioner's Petition is  
6 hereby dismissed.

7 **IT IS THEREFORE ORDERED** that the Petition is hereby dismissed  
8 without prejudice.

9  
10 DATED: March 25, 2014

  
11 JOHN A. KRONSTADT  
UNITED STATES DISTRICT JUDGE

12  
13 Presented on  
14 March 25, 2014 by:  
15

16 /s/  
VICTOR B. KENTON  
17 UNITED STATES MAGISTRATE JUDGE  
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